United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

978

No. 14,207

United States Court of Appeals
For the
District of Columbia Circuit

FILED JAN - 2 1958

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CLERK

ELEANOR CASPAR,
A minor by her father and next friend,
George J. Caspar, and
GEORGE J. CASPAR, individually,

Appellants,

v.

RITA DEVINE and RICHARD JOHN DeFELICE,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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EX 3-0625

QUESTIONS PRESENTED

Whether or not the Court erred in dismissing the complaint in view of the facts that the accident happened in the District of Columbia, the doctors, hospital records and the police conducting the investigation are also in the District.

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Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This appeal is from an Order of the Trial Court dismissing the complaint without prejudice. Jurisdiction of this Court to hear the appeal is based upon U.S. Code (1940) Section 1291.

STATEMENT OF CASE

The appellant-plaintiff, an infant, filed her complaint in the United States District Court for the District of Columbia. The defendants were not served due to the intervening Order To Show Cause why the Complaint should not be dismissed on the ground of forum non conveniens in accordance with the language used by the United States

Court of Appeals for the District of Columbia Circuit in Gross v. Owen, 95 U.S. App. D.C. 222, 221 F. 2d 94.

Appellant filed points and authorities and the affidavit of the father and next friend, in support of the retention of this cause in said U.S. District Court.

Appellant appeals from the Order dismissing the complaint.

STATEMENT OF POINTS

1. The Court erred in dismissing the complaint in view of the fact that the accident happened in the District of Columbia, the doctors, hospital records and the police conducting the investigation are also in the District.

SUMMARY OF ARGUMENT

Inasmuch as the Argument in chief is short, the summary of it is being dispensed with.

ARGUMENT

1. The Court below, sua sponte, issued an Order to show cause why this case should not be dismissed in accordance with the language used by the United States Court of Appeals for the District of Columbia Circuit in Gross v. Owen, 95 U.S. App. D.C. 222, 221 F. 2d 94. It is respectfully submitted that the facts set forth in the affidavit of the father and next friend of the minor plaintiff (J.A. 4) would justify the retention of this cause in the United States District Court by the very language in the cited case.

Quoting from Gulf Oil Corp. v. Gilbert, 330 U.S. 501, the Court repeats:

> "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. --- There is an appropriateness too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws and in law foreign to itself."

Unlike the Gross case, the case at bar occurred in the District of Columbia. The accident was investigated by police officers of the District of Columbia. It will be remembered that in the Gross case, the police were members of the Maryland County and the accident occurred in Maryland.

2. To further quote from the Gross case,

> "All parties and most of the witnesses reside in Maryland where appellants' claims arose from an automobile collision ---".

In the case at bar, the doctors and the hospital and the accident investigation report are all within the District of Columbia.

3. The Simons v. Simons, 88 U.S. App. D.C. 180, 187 F. 2d 364, which is cited in the Gross case is a matrimonial matter which the Court dismissed because neither the plaintiff wife nor the defendant husband had ever been residents or had their domicile in the District of Columbia. In the instant case, the minor plaintiff and her father lived in the District of Columbia all their lives and the minor plaintiff went to the Immaculata Seminary while she resided in the District of Columbia, and still attends that school although she lives in Maryland, two blocks over the District line. The affidavit of the father, who is next of friend, shows that he considers Washington to be his domicile where he still owns a home which is presently being rented. The Simons case and other companion cases of similar import, place stress upon

the fact that "the welfare of children, ---" were not affected, and, therefore, the Court should decline to take jurisdiction of the case. In the case at bar, the welfare of a sixteen year old girl, badly disfigured and seriously injured, is very much involved. The Simons case also points out, "obviously the action can be prosecuted in the adjoining county of Virginia, but a few miles from appellants' home with little, if any, more inconvenience or difficulty than in the District of Columbia, and probably with greater expedition." Here we see that convenience and distance are important criteria. In the instant case the police officers of the District of Columbia would not be amenable to process in Maryland nor would the hospital records and doctors. The distance to the Rockville Court House would be approximately 20 miles from the District of Columbia.

Quoting from 28 U.S.C. Section 1404(a):

> "For the convenience of parties and witnesses, in the interest of justice, a District Court may transfer any civil action to any other district or division where it might have been brought."

Referring to this provision, Judge Bazelon in the case of Wiren v. Paramount Pictures, Inc., 90 U.S. App. D.C. 105, 194 F. 2d 873, stated:

> "Transfer vel non under that statute should be decided by weighing the plaintiff's privilege of choosing the forum against the inconvenience, if any, caused either witnesses or defendants by retention in the chosen forum. Thus viewed, the reasons assigned by the trial court for ordering a transfer in the case at bar do not support the order."

4. Even in the Gross case, the Court of Appeals relied upon the case of Gulf Oil Corporation v. Gilbert, which refers to the following language as to the criteria that a court should use in determining whether jurisdiction obtains:

> "If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered and the one likely to be most pressed, is the private interest of the litigant. Important considerations are, the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses, and the cost of obtaining attendance of willing witnesses; possibility of view of premises if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be the questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex', 'harass' or 'oppress' the defendant by inflicting on him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of defendant, the plaintiff's choice of forum should rarely be disturbed."

And further, the importance of litigating an accident at its point of origin is reflected in the following quotation:

> "Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin ---."

CONCLUSION

For the foregoing reasons and other authorities that may be set forth in the arguments of this appeal, it is respectfully submitted that this cause of action should be retained in the District of Columbia.

Respectfully submitted,

HOWARD VOGEL

505 Washington Bldg.
Washington 5, D. C.

Attorney for Appellant

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JOINT APPENDIX

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12 [Filed July 29, 1957]

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

ELEANOR CASPAR, a minor, by her father and next of friend, George J. Caspar
5306 Falmouth Road
Bethesda, Md.

and

GEORGE J. CASPAR
5306 Falmouth Road
Bethesda, Md.

Plaintiffs

v.

Civil Action No. 1883-57

RITA DEVINE
8022 Aberdeen Road
Bethesda, Md.

and

RICHARD JOHN DeFELICE
7822 Glenbrook Road
Bethesda, Md.

Defendants

and

DIRECTOR OF VEHICLES AND TRAFFIC
Washington, D.C.
Resident Agent of Defendants

COMPLAINT FOR PERSONAL INJURIES
(Passenger Injured When Automobile Struck Tree)

First Count

1. The claim for relief herein on behalf of each of the plaintiffs against each or both of the defendants is for an amount in excess of

Three Thousand Dollars ($3,000.00) and within the jurisdiction of this Court.

2. Action is brought by the plaintiffs, residents of the State of Maryland, against both defendants, also residents of the State of Maryland.

13 3. On or about November 27, 1956 at about 11:30 P.M., the infant plaintiff, Eleanor Caspar, was a passenger in a vehicle owned by the defendant, Rita Devine, and operated by Richard John DeFelice. Richard John DeFelice is an infant, approximately seventeen (17) years of age, who was operating the vehicle on Garfield Street, N.W. opposite 3416, in the District of Columbia, when he so carelessly, negligently and in violation of the Traffic Regulations of the District of Columbia operated the automobile so that he caused it to strike against the tree and seriously injure the infant plaintiff.

4. As a result of said collision, the infant plaintiff sustained severe injuries to various parts of her body, more particularly a broken jaw, lost several of her teeth, sustained contusions and lacerations to her knees, and her head, a malformation of the jaw has developed; she has lost a considerable amount of weight due to worry of future disfigurement; she has become extremely nervous and self-conscious about her appearance; has suffered embarrassment and humiliation thereby; she has had to undergo extensive work by an orthodontist, medical treatment and oral surgery; she has suffered and will continue to suffer from said injuries, all to her damage in the sum of Sixty-Five Thousand Dollars ($65,000.00).

Second Count

Plaintiff, George J. Caspar, is the father of the infant, and states as follows:

1. He is the father of the infant plaintiff and as such is obligated to care for and furnish medical and hospital and dental treatment to her for the alleviation and cure of said injuries.

14 2. Said plaintiff repeats each and every allegation of the first

count and makes same a part hereof to the same effect as though fully set forth herein.

3. As a direct result of the aforesaid negligence and carelessness of the defendant and the resulting injuries to his daughter, the plaintiff, George J. Caspar, has been compelled and will in the future be compelled to pay large sums of money for hospitalization, medical treatment, medicines, x-rays in an effort to cure his daughter of her injuries.

4. As a result of said injuries he has lost and will continue to lose the services of his infant daughter.

WHEREFORE, the infant plaintiff, Eleanor Caspar, demands judgment from the defendant, either or both of the defendants, in the sum of Sixty-Five Thousand Dollars ($65,000.00).

WHEREFORE, George J. Caspar, the plaintiff, demands judgment of either or both of the defendants in the amount of Ten Thousand Dollars and no cents ($10,000.00) plus court costs of this suit.

WHEREFORE, by reason of the infancy of the defendant, Richard John DeFelice, the Plaintiffs herein respectfully request that the Court appoint a Guardian Ad Litem to defend his interest.

/s/ Howard Vogel

* * * * *

Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues herein.

/s/ Howard Vogel

15 [Filed July 31, 1957]

ORDER TO SHOW CAUSE

It appearing to the Court that the plaintiffs and the defendants in the above entitled cause are residents of the State of Maryland, and upon consideration of the language used by the United States Court of Appeals for the District of Columbia Circuit in Gross et al vs. Owen, No. 12310, it is by the Court this 31st day of July, 1957,

ORDERED that the attorney for the plaintiffs appear in Motions Court on the 14th day of August, 1957, at 10:00 A.M. to show cause why the above entitled action should not be dismissed.

/s/ Tamm
JUDGE

[SERVICE]

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20 [Filed August 14, 1957]

AFFIDAVIT OF GEORGE J. CASPAR

I, George J. Caspar, being duly sworn depose and say as follows:

This affidavit is being submitted in order to assist the Court to determine whether the following facts would justify a retention of the above-entitled cause in the District of Columbia rather than having it dismissed to be filed in the Circuit Court for Rockville, Md.

I am the father of Eleanor Caspar who was seriously injured in an automobile accident on November 26, 1956 while she was a passenger in an automobile. My mother and father were born in the District of Columbia. My children and I were also born in the District of Columbia where we resided in our home at 1342 Sheridan Street, N.W. until October 26, 1956. I am 46 years of age. I was married in the District of Columbia.

My daughter, Eleanor Caspar, the plaintiff herein, was born in

the District of Columbia August 10, 1941 and has been attending the Immaculata Seminary on Wisconsin Avenue and Nebraska Avenue, N.W. in the District of Columbia, where she is still a student. By October 26, 1956 our home at 1342 Sheridan Street, N.W., Washington, D.C.,
21 had become too small for our growing family of five children, and we moved into larger quarters at 5306 Falmouth Road, which has a mailing address of Washington 16, D.C. although it is two blocks over the District line in Maryland. I still own the house at 1342 Sheridan Street, N.W. and it is presently being rented.

Inasmuch as I am one of those few, so-called, "native" Washingtonians, and because of my family background, I have not voted in the State of Maryland and intend to continue to be a Washingtonian.

At the time of the accident, my daughter was taken to Emergency Hospital in the District of Columbia and since that time has been treated by the following doctors, all of whom have their offices in the District of Columbia: Dr. Z. Bernard Lloyd, Dr. Thomas R. Monks, Dr. William Brown Ingersoll, Dr. Wilfred Dudley, and Dr. Charles A. Milwater.

Due to the disfigurement and malformation of the jaw by reason of jaw fractures and dislocated teeth, my daughter Eleanor has lost a tremendous amount of weight by reason of her worry and concern about her appearance. This worry and humiliation and embarrassment caused her to fall down in her scholastic standing where she had been previously an "A" student. She has become extremely nervous and tense and hesitates to go out with her friends to proms and parties. Her despondency and frame of mind have made it necessary for us to arrange that a leading psychiatrist in the District of Columbia take her in hand.

22 The accident occurred in the District of Columbia, where the police had investigated the accident and had prepared its accident report.

If this case were to be brought in Rockville, Md., it would be difficult and expensive to produce the numerous doctors as witnesses at the trial.

/s/ George J. Caspar

[JURAT]

24 [Filed August 30, 1957]

NOTICE OF APPEAL

Notice is hereby given that Eleanor Caspar and George J. Caspar, plaintiffs above named, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the Order dismissing the above-captioned cause and entered in this action on August 15, 1957.

/s/ Howard Vogel

* * *

Attorney for Appellants

Eleanor Caspar and George J. Caspar.